

CT 96-2  
Tax Type: CIGARETTE TAX  
Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE )		
OF THE STATE OF ILLINOIS )		
	)	
	)	No.
v.	)	IBT
	)	
TAXPAYER	)	
	)	Daniel Mangiamele
	)	Administrative Law Judge
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

Appearances: ATTORNEY, on behalf of TAXPAYER.

Synopsis:

This matter came on for hearing pursuant to the Department's Notice to the respondent taxpayer that a hearing had been set for the purpose of determining whether the taxpayer had possessed 807 packages of unstamped cigarettes in violation of the provisions of Ill. Rev. Stat. ch. 120, Sec. 453.1 et seq., known as the Cigarette Tax Act. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

Findings of Fact:

The testimony of Special Agent Gary Krol of the Illinois Department of Revenue, Bureau of Criminal Investigations, and Department's Group Exhibit 1 established the following facts:

1. On June 23, 1994, Special Agent Lippner and Special Agent Robert S. Coda conducted a cigarette inspection at BUSINESS located at XXXXX in XXXXX, Illinois.
2. On a display counter and in the back room of the premises the agents found 807 packages of cigarettes which bore no Illinois cigarette tax stamps. Tr. p. 7.
3. The agents identified TAXPAYER as the owner of the business. Tr. p. 7.
4. TAXPAYER was placed under arrest for possession of unstamped cigarettes with intent to sell and subsequently plead guilty in the criminal proceedings. Tr. p. 8.
5. The respondent taxpayer offered no evidence to rebut the Department's prima facie case, and the hearing was concluded.

Conclusions of Law:

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the charges in question. Accordingly, by such failure, the determination by the Department that TAXPAYER is subject to the penalties provided in the Cigarette Tax Act must stand as a matter of law. In support thereof, the following recommendations are made.

Based on the foregoing facts, I recommend that the 807 packages of unstamped cigarettes seized by the Department be confiscated and forfeited to the State of Illinois, and that a penalty of \$15.00 per package of cigarettes, for every package in excess of 100 packages, be levied against this taxpayer.

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Daniel Mangiamele

Administrative Law Judge